

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BUILDING TRADES EMPLOYERS'
ASSOCIATION on behalf of THE NEW
YORK PLAN FOR THE SETTLEMENT
OF JURISDICTIONAL DISPUTES,

Plaintiffs,

vs.

JOHN E. MARCHELL, in his official
capacity as President of LOCAL UNION 3,
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS and LOCAL
UNION 3, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS,

Defendants.

CIVIL ACTION

NO. 08-CIV-4564 (DLC)

**DECLARATION OF
RICHARD H. MARKOWITZ, ESQUIRE**

RICHARD H. MARKOWITZ, ESQUIRE, an attorney duly admitted to practice law before the United States District Court for the Southern District of New York, declares, pursuant to 28 U.S.C. §1746, the following:

1. I am an attorney duly admitted to practice law in the State of New York and the Commonwealth of Pennsylvania and the District of Columbia. I am a member of the firm of Markowitz and Richman, attorneys for Intervenor, Local 1, International Union of Elevator Constructors, AFL-CIO.

2. I submit this Declaration in support of Intervenor's Application for a Preliminary Injunction.

3. I have represented labor unions before the National Labor Relations Board for more than fifty (50) years. I am a member of the Sub-Committee on Practice and Procedure before the National Labor Relations Board of the Labor and Employment Section of the American Bar Association. The Sub-Committee on Practice and Procedure before the National Labor Relations Board meets annually in late February or early March and presents questions, which have been obtained from members in various regions throughout the country, to members of the National Labor Relations Board and the General Counsel of the Board. These questions, dealing with procedure before the Board, are prepared by members of the Sub-Committee in various regions of the country and presented to the Co-Chairmen of the Sub-Committee for presentation to the Board and the General Counsel in late November or early December of each year. The Board's delays in processing cases and issuing decisions are always a subject of discussion.

4. The National Labor Relations Act establishes the National Labor Relations Board and provides it shall consist of five (5) members, appointed by the President by and with the advice and consent of the Senate. 29 U.S.C. §153(a). The members of the Board are appointed for a term of five years. The Board may delegate to three or more of its members any or all of the powers which it may exercise. 29 U.S.C. §153(b).

5. The National Labor Relations Act also provides for the appointment of a General Counsel of the Board who shall be appointed by the President with the advice and consent of the Senate. The General Counsel of the Board has overall supervision over the thirty or more Regional Offices of the Board throughout the country and over all of the employees of the Board in each such Region except for the Administrative Law Judges and the legal staff of each Board member. 29 U.S.C. §153(d).

6. Notwithstanding the provisions of the National Labor Relations Act, the current National Labor Relations Board consists only of two members, Member Schaumber, whose term expires in 2010 and Member Liebman, whose term expires in 2011. The reason for this situation is that the term of former Board Chairman Battista, who was nominated in 2002, expired on December 16, 2007. The two remaining Board members in 2007, Members Walsh and Kirsanow, were recess appointees whose terms expired, by operation of law, on December 31, 2007.

7. Thus, as of January 1, 2008, the National Labor Relations Board consisted of two members, Members Schaumber and Liebman. These two members have agreed to decide whatever cases they can agree upon but an extremely limited number of Decisions have been issued by the Board since January 1, 2008. In 1997, according to the Board's web site, the five member Board issued 315 decisions. Through June 4, 2008, the Board issued 87 decisions in 2008.

8. In or about March of 2008 the President of the United States nominated three persons to be members of the National Labor Relations Board to fill the existing vacancies. These nominees were former Chairman Battista, former Member Walsh, and Gerald Morales, Esquire. These nominees have not yet been considered by the Senate, and no action has been taken on their nominations.

9. It is the opinion of the undersigned that the Senate will not act upon these three nominees to the National Labor Relations Board until at least the Presidential election of 2008 and probably not until a new Senate is in existence in January, 2009.

10. It is my opinion that the National Labor Relations Board will issue very few decisions in the year 2008 and probably for some time thereafter in 2009 until a full Board is

nominated and confirmed. The current members of the Board, Members Schaumber and Liebman, are of different political parties and have been on different sides of a number of 3-2 decisions of the National Labor Relations Board issued in 2007.

11. It is my opinion that, if a Section 10k hearing is held on the unfair labor practice charges filed by Elevator Industries Association, no decision will be issued in this case until sometime in the year 2009 at the earliest. It is my opinion that the job at Lefrak City, giving rise to the instant litigation, will be completed before any decision is issued by the National Labor Relations Board in this Section 10(k) proceeding

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 5, 2008


RICHARD H. MARKOWITZ, ESQUIRE
(RHM-5158)